



SENATOR RUNNER'S WEEK IN REVIEW

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California National Guard Moves to the Southern Border

On June 1, 2006 Governor Schwarzenegger announced his intention to sign a memorandum of understanding (MOU) authorizing approximately 1,000 California National Guard forces to be used in support of the Customs and Border Protection mission to secure the southern border of California. The troops will be part of a 6,000-member coalition of citizen soldiers used to help secure the southern border and remedy the nation's illegal border crossing problem.

Much confusion exists over the statutes that govern the use of the National Guard. Upon news of the National Guard deployment to the 145-mile California-Mexico border, a number of questions have surfaced regarding the National Guard, command of the National Guard, and the effect the federal plan to secure the borders may have on the National Guard's ability to deal with domestic emergencies.

The Task at Hand

The MOU between the federal government and governors of the four border states outlines conditions of the National Guard's supporting role. The National Guard's tasks will include: repairing vehicles, building roads, offering air support, using surveillance cameras, constructing fences, and providing command control to free up Border Patrol agents for detaining migrants and other illegal border-crossers. The National Guard will play no direct role in apprehension, detention, or transportation of detained persons.

In addition to helping curb the flood of illegal immigration, the federal plan is intended to help curtail human smuggling, drug trafficking, and, in particular, to prevent potential terrorists from seeping through our porous southern border. As the federal government boosts the number of border agents by approximately 6,000 by the end of 2008, the National Guard will slowly withdraw from the southern border.

Substantial troop deployments of the National Guard will begin July 15. Governor Schwarzenegger also has declared a "firm end date" of December 31, 2008, for National Guard involvement and has stated that he intends for the mission to be carried out mostly by troops who volunteer for the assignment. As part of the Bush plan, the federal government will pick up the tab for the National

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Guard deployment. It has been estimated that, nationally, the costs of the deployment could top \$1 billion.

California National Guard

The National Guard is the oldest component of America's armed forces and a first responder in domestic emergencies. It has contributed to every major military campaign in the nation's history and now will serve as an integral piece to securing America's borders.

Government Code 8940 deems the State Military Department as the state entity responsible for the command, leadership, and management of the California Army and Air National Guard. The three missions of the National Guard are to provide: (1) mission ready forces to the federal government, as directed by the President, (2) emergency public safety support to civil authorities, as directed by the Governor, and (3) support to the community, as approved by proper authority.

The National Guard is funded on a 95%/5% split of federal and state dollars. According to the proposed 2006-07 budget, the state's share of funding for the California Army and Air National Guard is approximately \$38 million. The 2006-07 federal funding commitment for the National Guard is \$632 million.

There are approximately 20,000 individuals in the California National Guard. Currently 2,200 of these civilian soldiers are deployed overseas serving in the war against terror.

Title 32 Duty

Article 1, Section 8 of the U.S. Constitution (the Militia Clause) authorizes use of the National Guard under continuing state control, but in the service of the federal government, to "execute the laws of the Union, suppress insurrections and repel invasions."

These provisions are unique to the National Guard and are the authority by which governors answered the President's request for deployment of National Guard forces to our nation's airports following the terrorist attacks of Sept. 11, 2001. When in state active duty or Title 32 (U.S. Code) status, National Guard forces remain under the operational, tactical, and administrative control of the governor and the state. This authority is assigned to the governor, as commander in chief, and executed by the adjutant general, as the state's senior military commander.

While being deployed as part of the federal border control plan, the National Guard will remain under Title 32 status. Therefore, should a major earthquake, flood, terrorist attack, or large-scale fire occur, the governor would be able to pull troops off of the border and divert National Guard efforts where necessary without necessitating federal approval.

Title 10 Duty

The War Powers Clause of the Constitution grants the federal government plenary authority to raise and employ military forces, including mobilized National Guard units, under federal control and at federal expense for national defense purposes. This is the authority under which the federal government mobilizes and deploys National Guard units and personnel for combat, combat support, and combat service support missions at home and throughout the world. Such service is performed under the authority of Title 10 USC, meaning, among other things, that command and control rests solely with the president and the federal government.

When performed within the United States, Title 10 duty is subject to a number of legal restrictions, including provisions of the Posse Comitatus Act, which severely limits the use of federal military forces in support of domestic law enforcement operations. However, as stated earlier, these limitations will not apply since activated National Guard troops will be activated under Title 32 and will remain under state control.

When employed in Title 10 status, National Guard forces are stripped of all state control and become indistinguishable elements of the federal military force. Additionally, under the National Defense Act of 1916, the president can "federalize" a state's National Guard troops in an effort to centralize control over a chaotic situation. While rare, National Guard troops have been federalized in the past. The elder President George H.W. Bush federalized the Guard forces used to quell the 1992 riots in Los Angeles.

Conclusion

Even though current National Guard forces are deployed overseas and others are needed at home for disaster response, the number required for support at our nation's border is neither unreasonable nor an undue burden on the force. The states and the federal government must work in harmony to assure our collective short and long-term security.

Border control is a legitimate national security concern. The use of the military to assist at the border is appropriate while long-term, comprehensive solutions are being established.

**If you would like to contact Senator Runner, please click
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